

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 36 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and

MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
2. To be referred to the Reporter or not? Yes
2. To be referred to the Reporter or not? Yes
2. To be referred to the Reporter or not? Yes
2. To be referred to the Reporter or not? Yes
2. To be referred to the Reporter or not? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
3 to 5 No

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STATE OF GUJ.

Versus

PATEL ISHWARLAL SHANKERLAL ABATED

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Appearance:

AMEE YAGNIK, ADDL. PUBLIC PROSECUTOR for Petitioner

ABATED for Respondent No. 1

MR KR RAVAL for Respondent No. 2

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CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE A.M.KAPADIA

Date of decision: 02/11/98

ORAL JUDGEMENT : [Per : Bhatt, J.]

1. By this Appeal, the State has challenged the acquittal judgment recorded by the learned Extra Assistant Judge, Mehsana, in Session Case No. 28 of 1998 on 16.8.90, acquitting the respondent - original accused from the charges under Sections 307, 323, 324 read with Sec. 34 and also under Sec. 135 of the Bombay Police Act, by filing this Acquittal Appeal under Section 378 of the Criminal Procedure Code, 1977.

2. The respondent No.1 Patel Ishwarlal Shankarlal expired during the pendency of the Appeal. Therefore, appeal abated against him. He was original accused No.1. Respondent No.2 - original accused No.2 who came to be acquitted along with original accused No.3 Thakore Diwanji Dhulaji. The State, it appears, has not preferred appeal against the acquittal of original accused No.3. In substance, therefore, the appeal is only now against original accused No.2 Patel Ambalal Ishwarlal, respondent herein, who is the son-in-law of the complainant Maganlal Shankerlal Patel. The parties are herein, therefore, are addressed hereinafter accordingly.

3. Prosecution case has been that complainant father-in-law of sole respondent now - Patel Ambalal Ishwarlal was given contract by the Unjha Municipality for the disposal of the sewerage water in which original accused Ishwarlal father of original accused No.2 and only respondent herein also interested in the same contract. That was the main bone of contention. On the previous year, such a contract was obtained by original accused Ishwarlal. This motive is described by the prosecution for the commission of the crimes in question.

4. On 5.11.1986, at about 9'0 clock in the morning, the complainant Maganlal and his son Mugesh had gone for agricultural labour work in the field of Shivrambhai Chhaganbhai. The gross of the said field was purchased in advance by the complainant Maganlal. When they were preparing to base of gross after cutting them, the original accused Ishwarlal and his son original accused Ambalal came there along with original accused No.3 Thakore Diwanji. It is the case of the prosecution further that the complainant was abused and was

threatened. Accused No.1 Ishwarlal thereafter inflicted two blows on his legs. Original accused No.3 Thakore Diwanji had given stick blows whereas accused No.2 Ambalal is alleged to have given five to six blows on the head of the complainant and his son Mugesh, therefore, raised shout due to which owner of the field Shivrambhai and other labourers rushed to the venue, as a result of which, accused persons fled away.

6. The complaint was lodged by injured Manganlal, who is prosecution witness No.1 - Exhibit 17 and the complaint is produced at Exhibit 18. Offence came to be registered against the accused persons and after the investigation, the charge sheet followed for the offences punishable under Sec. 307 read with Sec. 34 and 114. The charge was accordingly framed by the learned Asst. Judge, on 3.7.1990 at Exh. 3, to which accused persons denied and claimed to be tried.

7. Prosecution placed the reliance on as many as 12 prosecution witnesses and also on the documentary evidence in the form of medical certificate, etc. Upon the examination and appraisal of the evidence of the prosecution, the trial court acquitted the accused persons holding that prosecution has failed to establish the charge against the accused persons. Therefore, this Appeal under Sec. 378 of the Code at the instance of the State

8. After having heard the learned Addl. Public Prosecutor and the learned Advocate appointed in Legal-aid for the sole respondent, original accused No.2 and having considered the testimonial collections and documentary evidence, we find no substance in this Appeal as in our opinion, the guilt of the sole respondent - original accused No.2 Ambalal has not been established beyond reasonable doubt.

9. It may be noted that original complainant prosecution witness No.1 Maganlal Exh.17, father-in-law of the sole surviving accused respondent in this appeal who has made successful attempt in saving his son-in-law who initially himself has been gone out law by changing the history. Our attention had been drawn to the material contradictions in the evidence of complainant Maganlal at Exh.17. In the light of the FIR produced at Exh.18, it is obvious that the initial case made out in the FIR by the complainant who is the father-in-law of the accused is not supported and for the reasons not far to seek. This aspect is rightly taken into account by the learned Asst. Sessions Judge.

10. Again, we also find in complete agreement with Mr. Raval, learned advocate for the original accused No.2 and the sole respondent that there are serious and material contradictions even in the evidence of complainant and medical officer. The conjoint reading of the evidence of medical officer, prosecution witness No.9 Dr. Shah at Exh. 36 and the evidence of the complainant Maganlal, prosecution Witness No.1 at Exh. 17, would lead no manner of doubt that there are substantial material contradictions on the main theme and core of the prosecution case like that the number of blows and the inflictions of the weapons. At one place, the complainant has stated in his evidence that he was inflicted stick blows by his son-in-law whereas his complaint clearly shows that his son-in-law had used iron pipe. Evidence of the complainant that he was given four to five blows on the head has not remain substantiated by the medical evidence of Dr. Shah and the evidence of the complainant, which ordinarily in a case like one on hand, who is an injured person should not be discarded, is found totally doubtful in view of the aforesaid circumstances in the present case and, therefore, the conclusion of the learned Assistant Sessions Judge appears to be justified.

11. Apart from that the learned Assist. Sessions Judge in his judgement has elaborately considered all the material contradictions emerging from the evidence of the complainant Maganlal in his evidence at Exh. 17. From the plain reading of the complaint at Exh. 18 and the medical certificate of Dr. Shah at Exh. 36, and paras 12, 13 and 14, after having read the observations and the conclusions recorded by the trial court in aforesaid three paragraphs in the impugned judgment, it cannot be contended even for a moment that the view taken by the trial court upon the trial and the evidence of the prosecution in any way unjust, unreasonable or perverse requiring our interference in this Appeal. On the contrary, we are satisfied that the assessment of the evidence made by the trial court and the ultimate conclusions recorded with the observations are weighty and justified.

12. Again, it be noted that the prosecution witness No.3 Shivrambhai Chhaganbhai - Exh. 20 in whose field, the incident had occurred at the relevant time is also of no avail to the prosecution. He is not an eye witness. On shout being raised by the complainant and his son Mugesh for the inflictions of blows by the accused persons as alleged, the owner of the field, namely,

prosecution witness No.3 Shivrambhai rushed to the venue and he had admittedly not seen accused persons who had run away. Therefore, the evidence of the prosecution witness Shivrambhai at Exh. 20 does not lend any reinforcement to the version of the prosecution to substitute the charge against the accused.

13. Apart from that, the prosecution witness No.4 Govindbhai Gafurbhai - Exh. 21, who was at the relevant time was working as a servant of prosecution witness No.3 Shivrambhai Chhaganbhai has turned hostile to the prosecution case. Therefore, this witness does not also lend any corroboration to the version of the prosecution.

14. It is well settled proposition of law that when the trial court has taken a perception from the analysis and evaluation of the evidence of the prosecution which is possible in that case simply because even if they were taken out a different view from the analysis of the evidence is not sufficient to convert the acquittal into conviction. No doubt, we make it clear again in the present case that we are in complete agreement with the learned Asst.Judge, who has correctly reached to the conclusion and has acquitted the accused from the said charges against them.

15. After having taken into consideration, the overall picture emerging from the facts and circumstances of the present case and the rival submissions, we feel that the impugned judgment of the acquittal recorded by the trial court is just reasonable and justified requiring no interference by us in this Appeal under Section 378 wherein the jurisdictional scope is also to an extent circumscribed as we are convinced that the appeal is totally meritless. Therefore, Appeal is dismissed.

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